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Feature Article

Is Your Corporate Culture on Drugs?

Strong corporate values can be undermined or fall on deaf ears. As is often the case, there is a cost for doing something and a higher cost for doing nothing.

by Barry J. Nadell



Every organization has its "corporate culture," its atmosphere and attitude. Unfortunately, the corporate culture perceived by management may not be the culture in practice. What standards of right and wrong exist in those areas out of management's immediate view and control? How high are those standards? How well are they maintained? These questions are the prime focus of any company's culture.

The use of drug and alcohol testing for current and prospective employees, along with background screening, delivers a far superior result to either procedure used alone. It has long been established that drug testing prior to making an offer of employment is an acceptable first step toward a drug-free workplace. When drug tests are administered as part of an ongoing program, whether post-accident, for reasonable suspicion, or at random, an employer benefits from increased deterrence as well as detection.

Urinalysis, for example, will detect the use of drugs. However, substances such as alcohol, cocaine, and many other drugs pass rapidly through a person's system. If the person to be tested is able to predict when the test is to be given, he can abstain from alcohol or cocaine use beforehand and mask the result. An applicant can also take other steps to circumvent detection, such as using someone else's urine or adulterating his own urine with a foreign substance.

Past drug or alcohol addiction is treated by the U.S. Equal Employment Opportunity Commission as a disability under the Americans with Disabilities Act. Drug or alcohol disabilities, as opposed to recent use, may be evaluated by medical tests only once a job offer has been extended to an applicant. Such evaluation includes tests to determine whether an individual has consumed enough alcohol to register a "positive." Thus, an applicant gains some prediction of when and how he may be tested and may take precautions.

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Background screening goes deeper into a person's history. It detects past offenses and destructive patterns a person may have reformed or which still may be

characteristic of the person. Criminal searches, as well as searches of department of motor vehicle information, can reveal convictions directly related to drug and alcohol abuse, such as driving under the influence or possession of drug paraphernalia. When an applicant fails to disclose such convictions in response to direct questions contained in the employment application, immediate grounds are available to deny employment, should an employer wish to do so.

Even when an applicant discloses information regarding past convictions, employers can justify denial of employment where the offense is arguably job-related. Not hiring an applicant as a driver because of past DUIs would be a direct instance of a job-related offense. Beyond this, and even though it is a gray area, an applicant with DUIs might be denied employment on the basis of character deficiency, even though the position applied for does not involve driving. Because of the interrelation of background screening and drug testing, it is usually more efficient administratively to employ one company that offers both services. Similarly, companies with more than one location sometimes find themselves working with several different testing facilities, whereas one service offering facilities nationwide is preferable for consistency and a more uniform evaluation of results.

We Have a Problem

Criminality and drug abuse are known problems in our society at this time. The exact extent of such problems can be estimated, although the figures may vary from industry to industry. A recent survey of criminal checks on employment applicants at randomly selected California health care facilities showed a positive rate of 11.5 percent. Better than one in 10 applicants had criminal records! A similar study conducted for automobile dealerships yielded an even higher figure--14.2 percent of applicants, one in seven, with a criminal past, whether felony or misdemeanor.

As regards drug testing, the Bureau of Labor Statistics showed in 1997 that 73 percent of all current drug abusers over 18 were employed. So, most drug abusers have jobs.

"Hit" ratios for urinalysis typically reveal 3-5 percent of applicants testing positive for drugs. More specific evidence comes from a recent study conducted by Steelcase Corporation to compare competing drug-detection technologies. Using the higher standard of hair testing, 18 percent identified positive out of 774 job applicants, or about one in six. A conservative look indicates employers are likely to be at risk for at least 15-20 percent of their job applicants, when both criminal background screening (11.5-14.2 percent) and drug-testing results (18 percent) are taken together.

With these statistics of impairment in mind, it is not difficult to see how corporate values put forth by conscientious managers can be undermined or fall on deaf ears. As is often the case, there is a cost for doing something and a higher cost for doing nothing.

The National Institutes of Health estimates a drug-abusing employee costs his or her employer $7,000 to $10,000 annually. This is not a difficult figure to believe when considering all of the costs connected with drug and alcohol abuse, including non-production, lateness, absenteeism, errors, accidents, insurance claims, turnover, and the discouraging effects on non-abusing co-workers. There also is a potential for theft, violence, and lawsuits.

A survey sponsored by the National Institute on Drug Abuse reported that drug-abusing employees were:

- 2.2 times more likely to request early dismissal or time off,
- 2.5 times more likely to have an absence of eight days or more,
- 3.0 times more likely to be late for work,
- 3.6 times more likely to be involved in a workplace accident, and
- 5.0 times more likely to file worker's compensation claims.

A study by the U.S. Postal Service yielded similar results: Employees who tested positive on their pre-employment drug test were 77 percent more likely to be discharged within the first three years of employment

and were absent from work 66 percent more often than those who tested negative.

Five Steps to Address the Problem

Given that substance abuse is a problem in society and the workplace at this time, what steps may be taken to address it? By necessity, an organization will address the problems in one of two ways. It either screens to identify problematic individuals in advance of making a job offer, or it deals with them through the normal weeding out process that gradually eliminates incompetent or non-performing employees from its ranks.

Many companies have successfully established drug-free workplace programs to strengthen these two processes. From their success, key actions can be identified.

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1. Legal. The legalities of drug testing vary from industry to industry and from state to state. A safe starting point is to check with an attorney competent in employment issues. With the legal parameters known, management can more confidently formulate plans.

2. Policy. The first step toward implementing a program is the design or policy phase. Policy needs to address all affected groups, including management, employees, unions, and so forth.

Most important, management must fully commit itself to reporting and testing suspected offenders. While policy alone can have some deterrent effect, it is most powerful when it expresses group consensus. For this reason, the time needed to gain all parties' agreement to a proposed drug screening policy is a valuable investment in gaining overall momentum toward enforcement. One way to increase management's commitment to a drug enforcement policy is education to increase its knowledge of the problem and ability to recognize drug or alcohol abuse among the workers. One such program offers on-site training of managers and supervisors via an association of retired narcotics law enforcement officers.

3. Disclosure. Once a sound policy has been drafted, suitable disclosure forms must be written. A disclosure form is a separate document and must not be part of the employment application. It is strongly recommended that disclosure documents be written not only to inform applicants, but also to deter those applicants on drugs from applying. Preferably, the disclosure also would indicate to all employees and prospective employees that drug tests are to be given both prior to and throughout the duration of employment.

The employment application should not be left out of the disclosure process. Enhanced deterrence is obtained by highlighting both the background check and drug test processes on the front of the application form. It is worth noting that in many states, employees under 18 may not legally sign disclosure forms signifying assent to a drug test because they are considered minors.

As previously mentioned, past addiction to illegal drugs or controlled substances is covered under the Americans with Disabilities Act, as long as the person is not a current illegal drug user. Part of the protection afforded to disabled people under the act is a two-step employment process (pre- and post-offer) that gives the applicant a chance to pass normal standards before any special assessments of disability are made. During the pre-offer stage the applicant is subject to normal evaluation, such as submitting an application and having references checked. Disabilities are not evaluated until the post-offer stage.

According to the "EEOC Guidance on Pre-Employment Inquiries under the Americans with Disabilities Act," there are specific questions an employer may and may not ask during the pre-offer phase. An employer may ask about current illegal use of drugs or current drinking habits. Also, an employer may ask about past illegal drug use with questions such as:

The time you spend gaining all parties' agreement to a proposed drug screening policy is a valuable investment. You build momentum for enforcement.

- Have you ever used illegal drugs?
- When is the last time you used illegal drugs?
- Have you used illegal drugs in the last six months?

- Have you ever been convicted of a DUI?

- An employer *may not* ask questions likely to uncover addiction, such as:
- How often did you use illegal drugs (alcohol) in the past?

Questions that may uncover a drug or alcohol disability prior to the post-offer phase of processing an applicant are prohibited.

In terms of actual testing, an employer may give applicants tests to determine the illegal use of controlled substances but they may not do so for alcohol except for certain job categories in specific industries. However, once an offer has been extended to an individual, medical exams including tests to determine how much alcohol a person has consumed may be given. The only requirements pertaining to such testing are a) that all employees in the same job category be subject to the same standards, regardless of disability, and b) that the medical information obtained must be kept confidential.

In addition to pre-employment drug testing, reasonable suspicion and post-accident testing are recommended. Random drug testing is the norm for "safety sensitive" positions or on hazardous job sites as determined by an employer. Although most states allow random testing, some states and specific counties within certain states do not.

4. Testing. One of the practical components of a drug policy is deciding which drugs to screen for. The drugs to be tested may affect the testing methods employed. A common starting point is the NIDA 5 panel. This includes major drug groups, such as marijuana, cocaine, opiates (including heroin), methamphetamines (including speed, uppers, Ecstasy), and PCP (angel dust).

The most common drug-testing methods are urinalysis (on-site or off-site), hair testing, and oral fluid testing. Oral fluid testing is commonly used to detect alcohol use on the job or after accidents, but with recent breakthroughs products are available that test the NIDA 5.

Hair testing is a development in recent years with exciting capabilities. Companies that have developed this technology claim higher detection rates because of the fact hair makes available an approximate 90-day drug history for an individual. One company claims detection rates six times that of urinalysis in general and 16 times that of urinalysis for cocaine, in particular. Hair testing can today detect even trendy drugs of abuse, such as Ecstasy.

In addition, it is recommended to test for adulterants, the substances an applicant can add to the sample to either void the test or prevent some substance from being detected. The danger without adulterant screening is that an adulterated sample will result in a false "negative" test result. Use of adulterants is common enough that many drug-testing facilities now provide employers an option to test for adulterants automatically.

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5. Results. Negative test results normally are obtained within 24 hours, with positives taking an extra one to two days for verification.

A company's policy must address how positive results are to be handled. There may be legal requirements about informing the applicant of his or her test results. In some states, the law may require or offer the applicant a re-test or second test procedure. In other states, positives are sent automatically to a Medical Review Officer. The MRO typically interviews the applicant about substances that could have altered the test results before reaching a final determination on the sample.

Job applicants who test positive for drugs may be denied employment. Employees who are found to be abusing alcohol or drugs should be referred to Employee Assistance Programs for treatment. EAPs can perform a variety of services for employees, including drug and alcohol treatment programs, and EAP

services very often are outsourced. The Employee Assistance Professionals Association, founded in 1971, is a good starting point for information on these services and can be accessed online at www.eap-association.com.

There are many examples of companies and organizations recording decreased expenses as a result of using EAPs to address employees with drug or alcohol problems. The City of Los Angeles' Department of Water and Power reported a savings of $350,000 over a five-year period in reduced sickness and absenteeism among employees with alcohol problems.

Expense Fears Misplaced

Creating employee drug-testing and background screening programs is not a daunting task. It only requires a concerted effort by management with due respect for the legalities involved and a competent provider of drug testing services. Many smaller companies fear the expense, but screening programs may well save them money.

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